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THE POINT OF VIEW

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THE POINT OF VIEW.

The address of Nathan William MacChesney, Esq., of Chicago, the retiring president of the American Institute of Criminal Law and Criminology, was one of the features of the recent third annual conference of the Institute at Boston. In this address, Mr. MacChesney discussed the new science of criminology, the prevalence of crime, and the progress toward uniformity in state codes of criminal law and procedure.

After drawing a comparison between the prevalence of crime in England and the United States, much to the disadvantage of our own people, he points to the fact that many of our writers and public speakers "are accustomed to salving our pride in this matter by referring to unrestricted immigration as an explanation." Statistics, however, as he says, does not support this contention, and here Mr. MacChesney comes, I think, happily to the heart of the science of criminology as it stands to-day. "We must," he says, "find some other explanation than unrestricted immigration to account for the wave of crime in this country. With the lack of discipline among American-born children, the breaking down of home life in many of our centers, and the absence of respect for law everywhere apparent," we Americans are confronted by a serious situation. To extricate ourselves is our problem. Our

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high resolve to find its solution must not be dampened by prepossessions or misconceptions of any extant theory. Nothing must be allowed to "retard the present public interest in furnishing proper environmental conditions for our children, and, by every educational and reformatory means, preventing or ameliorating the tendency toward criminality."

This leads directly to the point of view in criminological science. It is set forth again with distinctness and accuracy in an admirable chapter by Harold Höffding, a translation of which under the title, "The Right of the State to Punish," will appear in a subsequent issue of the JOURNAL. The ultimate problem of society is to secure an individual and a group whose responses to the situation in the environment—which responses taken together constitute behavior—shall measure up to a certain standard. This standard is determined by the social group, and deviation from it is recognized as crime, if, at any rate, survival is adversely affected thereby. Determined by the social group—yes, but not through statutes without exception, however many of us would like to believe it. After much fitting and trying, some of our statutes in the long run may receive recognition as definitions of standards of behavior. But, for the most part, these standards become defined, little by little, through the give and take among individuals who live in approximately the same situation. As situations differ, therefore, and human needs with them, according to geographical location, economic conditions, etc., the standards of human behavior must differ. Hence it is that what is proper on one side of the line may be questionable on the other; what is criminal here is innocent there. We have, therefore, no uniform standard of behavior, and as Mr. William M. Ivins, of the New York bar, said so well in his address at a conference on reform of criminal law and procedure at Columbia University, on May 13, 1911, "we have no satisfactory definition of crime" and we cannot possibly have one that will be valid universally—to the infinite confusion of legislation and procedure and, we may say, of society's greatest function, moral education. Yet, in spite of the confusion, society strives to bring forward sub-groups and individuals who will conform to a more or less local standard of behavior. This is education; and we may therefore describe the point of view of society with reference to the prospective and realized behavior of the members by the term, "educational."

"Education," therefore, in the science of criminology is a large word. The community, when it sends a group of its wards to an educational institution, saying to the official in charge, "Take these youths and make men and women of them, having regard for social conduct in addition to

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the other usual acquisitions," gives him a place of influence as a practical criminologist, whose duties are chiefly preventive. Now, the official who is awake to his opportunities will know the points of probable inherited strength and weakness, the economic and social status, especially of the troublesome youth, and daunted by no idea of the fatalism of heredity and no theory of "economic determinism," he will carefully and patiently arrange the stimuli (factors in the environment in the broadest sense) day by day and year by year, in such a way as to bring about under his direction the desired modes of response. It is a case of establishing primary habits of behavior where none hitherto had existed. Frequently failure marks the way and then it is that we have the delinquent to deal with. Here is the reformatory function of society, and various officials such as teachers in reform schools, probation officers, etc., are created to accomplish her ends in this sphere. Strictly, however, this is not an "other function." It, too, is educational, but here the emphasis is rather upon *breaking* old habits obtrusively or unobtrusively and substituting others for them. This work requires a more specialized arrangement of stimuli in the environment, and a more intensive examination of the individual's physical and mental ability to react to the situation with which he is confronted. This view of the whole matter makes the policeman, the court, the juror in the box, the probation officer, the jailer, the superintendent of the institution for the care of the juvenile or the adult delinquent, and every other officer who has to deal in any way with the breaker of the law—an educator. At the worst, he is where an educator ought to stand.

This is an illuminating point of view. It is no less worthy because it fires the imagination. How bare of possibilities was the old "retribution" point of view which would simply give a knock-out blow to the criminal who happened to be caught red-handed, and the unmodified "protection" viewpoint which would simply insulate society against her rebellious members. To-day, every official is, ideally, an educator with all that the term implies in the way of equipment, temperament, and ideals. This means that, from the ground we have taken, we are looking forward to a day when the delinquent in both his physical and mental nature, and as a product in part of various external factors, may be understood with at least approximate thoroughness by every agent of society who is in touch with him.

This is an ideal which will not be realized fully in our own generation nor in the next, nor in the next following. Educators of normal children in the schools are far from realizing a parallel ideal in their sphere. But it is none too high and we must be after it. The Institute

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and the JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY must, without flagging, stimulate investigation. Their problems must be viewed from every angle. Thus, in their own light, they may from time to time prove themselves reformatory agents, not on haphazard but on strictly scientific grounds in the fields of law, procedure, and penology.

In our special corner and in the educational field at large common sense has, here a little and there a little, dictated forms of procedure. But it is one thing to stake out our territory and to identify our methods and our point of view, and still another to affirm on the basis of a scientific knowledge of the nature of man and his functions, individually and collectively, that our processes and outlook should be what they are or that they should or should not be different. In general, it may be said that our practice is ahead of our theory. We are working along the line of trial and error. Experts disagree in their valuation of our educational methods because guiding principles are lacking. In such a case our system will fail at many points and sacrifice our material. It is doing so daily. *The Catholic Educational Review* justly charges that we Americans in our public institutions fail lamentably in the development of self-control and respect for the rights of others. We must have more light from the sciences of medicine, anthropology, economics, sociology, and psychology. It is from these sources that the practical worker must learn better than he knows now what he has to deal with in the particular instance; how to diagnose his case; what will be the reaction to this or that method. Diagnosis properly precedes treatment. As we become able to set forth this light, our educators—prison officials, judges, or what not—will use it.

The best means for making this scientific data available is through coöperation rather than individualistic research. A few years ago the neurologists, at the suggestion of Professor His, of Leipzig, organized the "Brain Commission," composed of widely separated investigators, to stimulate the *co-operative* study of the anatomy of the brain. So advantageous has this movement proven that the embryologists have recently adopted a similar plan. The JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY would be glad to receive suggestions with reference to co-ordinating individual efforts at research within its own special field.

The writer is very well aware that the point of view as described above does not fully take into account the responsibility of society in the matter of crime. It will be said that there is a considerable group of criminals whom the educational purpose does not fit—the class of born criminals, so-called, one of them has been minutely described by Dr. Hoeve in a recent article in the *Illinois Medical Journal*, and which

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is reviewed in the present issue of this JOURNAL. Ignorance at this point cannot be hidden under words. We do not know whether, as a matter of fact, there are *born* criminals, who, if recognized at a sufficiently early day, may not by fitting treatment be inclined toward social conduct. Perhaps this is one point that investigation in the future may make plain. But certainly it is true that there are individuals in our prisons and, very unfortunately, abroad in the land, upon whom our best educational or reformatory measures are bent in vain. One of these, perhaps, is the self-confessed murderer of Annie Lemberger, whose case is cited on another page. The educational must be supplemented by the protective point of view. There are criminals who remain uninfluenced in the face of the best treatment that we can apply. For the safety of all, the sooner they are recognized the better, and when once discovered the only sane policy to pursue with respect to them is isolation from society.

One point more. The criminal is the exceptional case to whom our social theories and practices do not apply. In science, generally, it is universally true that the vexatious exceptions are the source of suggestions of new hypotheses, which in due time have changed the face of a considerable body or the whole of science. It may not be too much to expect that the inter-action between social institutions on the one hand, and the exceptional misfits on the other, will eventually be the means of correcting both, here a little and there a little. There is profit in everything, and time and wisdom will bring it to light. R. H. G.

PROBLEMS FOR THE PRISON ASSOCIATION.

I wish to indicate here what I believe to be the most essential principles approved by the various resolutions of the International Prison Congress at Washington and to propose certain problems which have vital significance for us in America. The Congress at Washington was divided, for purposes of discussion by specialists, into four sections: criminal law and procedure; penitentiary administrations; preventive methods; treatment of children and youth. The central and dominant principle which came up in each of the four sections may be thus stated:

The community seeks to protect its interests through criminal law, correctional institutions, preventive measures and care of morally imperiled children and youth, by deterrent penalties, by reformatory treatment in institutions, by supervision of convicts free on parole, and by improvement of conditions which affect the character of the young. The interests which society thus seeks to guard are order, security of life